

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the Forty-first Legislature at its Regular Session passed House Bill No. 436, being "AN ACT amending Article 287 of the Penal Code of the State of Texas of 1925 as amended by Chapter 139 of the General Laws of the Regular Session of the 39th Legislature so as to repeal that portion of the State Law prohibiting the operation of moving picture shows and theatres on Sunday in this State in any incorporated city or town after one P. M. and empowering any such city or town to prohibit by ordinance the keeping open or showing of such motion picture shows or theatres after one P. M.; and declaring an emergency"; and,

WHEREAS, said Bill has been vetoed for the reasons set out in the following statement, which has been filed with said Bill in the office of the Secretary of State:

This Bill amends Article 237 of the Penal Code to make it legal for moving picture shows and theatres to operate in incorporated cities and towns after one o'clock p.m. on Sunday.

Article 286 of the Penal Code provides that "any * * * proprietor of any place of amusement * * * who shall * * * permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday shall be fined not less than \$20.00 nor more than \$50.00". The statute provides that the term "public amusements" shall be construed to mean circuses, theatres, variety theatres and such other amusements as are exhibited and for which an admission fee is charged. This article has been construed by the courts to prohibit the operation of motion picture shows on Sunday.

Article 287 of the Penal Code, which article is amended by this Act, excepts from the operation of Article 286, such things as the sale of provisions before nine p.m. on Sunday, the sale of newspapers, ice, ice cream, milk and the sending of telegrams, etc. To Article 287 the further provision has been added that Article 286 shall not apply after one o'clock p.m. to moving picture shows or theatres operating in any incorporated city or town.

Section 2 of this Bill provides that the Commission or City Council of the cities or towns in which moving picture shows or theatres are located shall have the power, by city ordinance, to prohibit the keeping open or showing of such motion picture shows or theatres on Sunday after one o'clock p.m.

It is, therefore, to be observed that Article 286, as it has been construed by the courts, prohibits the operation of picture shows on Sunday. Article 287, is amended by this Bill to except the operation of picture shows in incorporated cities or towns after one o'clock p.m. on Sunday, from the terms of Article 286. This Bill, therefore, affirmatively makes it legal to operate a picture show in any incorporated city or town of this State after one o'clock p.m. on Sunday. But section 2 of this Bill provides that the city commissioners may pass a city ordinance to prohibit the doing of that which Article 287, as amended by this Bill, makes legal; that is, to operate picture shows after one o'clock p.m. on Sunday. If this Bill becomes a law, then under the general law of this State it will be legal to operate a picture show in an incorporated city after one p.m. on Sunday, unless the city council by ordinance prohibits the acts legalized by this Bill.

Section 28 of the Bill of Rights of the Constitution provides that "no power of suspending laws in this State shall be exercised except by the Legislature". Formerly this provision of the Constitution was to the effect that "no power of suspending laws in this State shall be exercised except by the Legislature or its authority". The Constitution of 1876 omitted the last three words of this article as it existed in former Constitutions and the present constitutional provision reads as first above quoted.

Under this provision of the Constitution the Court of Criminal Appeals in the case of Ex parte Ogden, 66 S. W. 1,100, held that an ordinance of the city of Beaumont which prohibited the selling of pools on horse races was unconstitutional and void because it suspended the operation of the State statute which legalized the selling of these pools and fixed a tax for engaging in such business. Many other cases can be cited in which the courts of last resort in this State have held that under this section of the Constitution the Legislature cannot authorize a city board of aldermen or a city commission to pass an ordinance suspending the operation of a general law passed by the State Legislature.

In this instance the Legislature has made provision of law affirmatively exempting from the operation of the statute the showing of motion pictures in theatres in incorporated cities and towns after one o'clock p.m. on Sundays; and, then, has provided that the city commissioners or city council may by ordinance set aside this provision of the law and make it illegal to operate picture shows after one o'clock p.m. on Sunday. Among the cases upon this point are the following: Burton vs Dupres, 46, S. W. 272; Arroyo vs State, 69 S. W. 504; McDonald vs Denton, 135 S. W. 1148; Fay vs State, 71 S. W. 603.

It is, therefore, my judgment that under the Constitution this Bill is invalid.

For the reasons stated, and upon the authorities cited, it is my opinion this Bill is unconstitutional, and I, therefore, hereby veto it.


Governor of Texas

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT I,
DAN MOODY, Governor of the State of Texas, under and by virtue of the authority
vested in me by the Constitution and Laws of this State, have vetoed said Bill
for the reasons stated and on file, and do hereby proclaim said action to have
been taken.



BY THE GOVERNOR:

IN TESTIMONY WHEREOF, I have hereunto
signed my name officially and caused
the seal of State to be impressed
hereon at Austin, Texas, this the 1st
day of April, A. D. 1929.

Dan Moody

Governor of Texas

Secretary of State